

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
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CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY [Signature]

TAYAUN MESSER, §
PLAINTIFF, §
§
V. § CAUSE NO. A-20-CV-00125-LY
§
THE LINCOLN NATIONAL LIFE §
INSURANCE COMPANY, §
DEFENDANT. §
§

ORDER ON REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Before the court is the above-styled and numbered action commenced by Plaintiff Tayaun Messer under the Employee Retirement Income Security Act of 1974, as amended. *See* 29 U.S.C. § 1001-1461 (“ERISA”). Messer disagrees with Defendant Lincoln National Life Insurance Company’s (“Lincoln”) calculation of Messer’s basic monthly earnings and seeks to recover additional benefits under her employer-provided long-term disability insurance policy. The court referred to the United States Magistrate Judge the parties’ cross-motions for summary judgment, Lincoln’s Motion for Summary Judgment filed December 11, 2020 (Doc. #14), Messer’s Cross-Motion for Summary Judgment filed January 15, 2021 (Doc. #17), and all related responses for report and recommendation. *See* 28 U.S.C. § 636(b)(1). Before the court is the Report and Recommendation of the United States Magistrate Judge filed July 16, 2021 (Doc. #25). The magistrate judge recommends that the court grant Lincoln’s summary-judgment motion, deny Messer’s cross-motion for summary judgment, and render judgment for Defendant. The magistrate judge determined that Lincoln’s interpretation of the long-term disability policy at issue was

reasonable, and that Lincoln did not abuse its discretion in calculating Messer's basic monthly earnings.

A party may serve and file specific written objections to the proposed findings and recommendations of a magistrate judge within fourteen days after being served with a copy of the report and recommendation and thereby secure *de novo* review by the district court. *See* 28 U.S.C. § 636(b); Fed. R. Civ. P. 72(b). A party's failure to timely file written objections to the proposed findings, conclusions, and recommendation in a report and recommendation bars that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *See Douglass v. United Services Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (en banc).

The parties received the report and recommendation on July 19, 2021, and objections if any, were due to be filed on or before August 2, 2021. Messer filed objections to the report and recommendation on August 2, 2021 (Doc. #25). In light of the objections, the court has undertaken a *de novo* review of the entire case file.

Having considered the motions, responses, objections, the case file, and the applicable law, the court will overrule the objections and will accept and adopt the report and recommendation for substantially the reasons stated therein.

IT IS ORDERED that Plaintiff Tayaun Messer's objections to the report and recommendation filed on August 2, 2021 (Doc. #26) are **OVERRULED**.

IT IS ORDERED that for substantially the reasons stated therein the Report and Recommendation of the United States Magistrate Judge filed July 16, 2021 (Doc. #25) is **ACCEPTED AND ADOPTED**.

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment filed December 11, 2020 (Doc. #14) is **GRANTED**.

IT IS FURTHER ORDERED that Lincoln's basic-monthly-earnings calculation was reasonable and supported by substantial evidence and Lincoln did not abuse its discretion in calculating Messer's basic monthly earnings.

IT IS FURTHER ORDERED that Plaintiff Tayaun Messer's Cross-Motion for Summary Judgment filed January 15, 2021 (Doc. #17) is **DENIED**.

SIGNED this 30th day of August, 2021.


LEE YEAKEL
UNITED STATES DISTRICT JUDGE